Before the FEDERAL COMMUNICATIONS COMMISSION Washington, DC 20554

In the Matter of)	
Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC For Consent To)) WT D	ocket No. 12-4
Assign Licenses)	
Application of Cellco Partnership d/b/a Verizon)	
Wireless and Cox TMI Wireless, LLC For Consent To Assign Licenses)	
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COMMENTS OF ATLANTIC TELE-NETWORK, INC.

Atlantic Tele-Network, Inc. ("ATN")¹ hereby respectfully submits its comments in response to the *Public Notice* released by the Federal Communications Commission (the "FCC" or "Commission") in the above-captioned proceeding in which the Commission seeks comment on the impact of the application of Verizon Wireless and T-Mobile (the "Divestiture Transaction") to assign AWS-1 licenses on the Verizon Wireless/SpectrumCo and Verizon Wireless/Cox transactions (collectively, the "Verizon/SpectrumCo Transactions").² While the proposed Divestiture Transaction may alleviate spectrum concerns for T-Mobile, it does nothing to alleviate any of the underlying spectrum aggregation issues and concerns for all other carriers

¹ These Comments are submitted on behalf of ATN and its FCC-regulated subsidiaries.

² Wireless Telecommunications Bureau Seeks Comment On The Impact On The Verizon Wireless-SpectrumCo and Verizon Wireless-Cox Transactions of the Applications of Verizon Wireless and T-Mobile To Assign AWS-1 Licenses, Public Notice, DA 12-998 (rel. June 26, 2012) ("Public Notice").

with respect to the Verizon/SpectrumCo Transactions.³ In response, the following is respectfully shown:

I. INTRODUCTION

ATN is a telecommunications company that provides service to under-served markets in North America and the Caribbean. ATN serves some of the most rural markets in the country with wireless and broadband services⁴ through the following subsidiaries: Allied Wireless Communications Corp., d/b/a/ Alltel ("AWCC" or "Alltel");⁵ Commnet Wireless, LLC, ("Commnet")⁶ and Choice Communications, LLC ("Choice").⁷ ATN applauds the Commission for recognizing the substantial overlap in licenses in the Divestiture Transaction and Verizon/SpectrumCo Transactions, and the potential for this overlap to impact those transactions in both a positive and negative manner. The Commission specifically requests comments that "focus on the impact" of the Divestiture Transaction "on the spectrum aggregation issues raised in the context" of the Verizon/SpectrumCo docket.⁸ In response, ATN maintains that the

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³ While ATN does not necessarily oppose attempts by carriers to secure additional spectrum in urban markets where there is a demonstrated need, the Commission must be careful not to allow urban spectrum to be acquired at the expense of rural consumers. Where a carrier is acquiring spectrum across large geographic areas primarily to address needs in urban markets, but cannot demonstrate a need for the spectrum in surrounding rural areas, the Commission must take steps to ensure that underutilized rural spectrum is divested to operating entities with near-term spectrum needs, rather than simply allowing it to lie fallow. Simply put, while Verizon and T-Mobile seek to justify the proposed transactions based on alleged needs in urban markets, this rationale becomes more difficult to sustain "outside the city limits." Carriers like ATN, on the other hand, have a demonstrated, near-term need for spectrum in rural markets, and should be provided with the opportunity to acquire divested spectrum that would otherwise be left underutilized.

⁴ ATN also provides wireline service to rural markets of Vermont and New Hampshire, as well as fiber services to rural markets in New York.

⁵ AWCC is a retail mobile communications provider operating in six states (Georgia, South Carolina, North Carolina, Illinois, Ohio and Idaho) and 26 CMAs.

⁶ Commnet is a provider of wholesale and retail wireless in the southwestern United States, including Navajo Tribal lands.

⁷ Choice is a provider of wireless fixed and mobile service in the U.S. Virgin Islands.

⁸ *Public Notice* at 2.

Divestiture Transaction fails to alleviate any of the underlying concerns that ATN – and others – have consistently raised on the record in this proceeding. Specifically, the proposed Divestiture Transaction does nothing to resolve ATN's concerns regarding the need for wireless carriers, especially small, rural and mid-tier carriers, to obtain additional spectrum in order to provide competitive 4G services to consumers. Furthermore, the proposed Divestiture Transaction also does not alleviate the warehousing and speculation concerns that are prevalent in the Verizon/SpectrumCo Transaction. In fact, the Divestiture Transaction only seems to reaffirm these concerns, and thus, reaffirm the importance of the Commission's analysis with respect to these transactions. Therefore, regardless of whether the Commission permits the Divestiture Transaction to move forward, the Commission must order divestitures of usable AWS or other spectrum to operating companies in certain markets.

II. THE PROPOSED DIVESTITURE TRANSACTION WILL NOT ALLEVIATE THE SPECTRUM SHORTAGE

In characterizing spectrum as the "oxygen that allows all of the[] mobile innovations to breathe," Chairman Genachowski continued his emphasis on the importance of spectrum to the wireless industry. The record in this proceeding supports Chairman Genachowski's characterization by further demonstrating the necessity of finding a prompt resolution to this country's spectrum crisis. The Commission has heard this cry from carriers across the industry

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⁹Julius Genachowski, Chairman, Fed. Commc'ns Comm'n, Remarks as Prepared for Delivery at the CTIA Wireless Convention (Mar. 22, 2011) http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305309A1.doc

¹⁰ See e.g., RCA – The Competitive Carriers Association Reply to Opposition to Petition to Condition or Otherwise Deny Transactions, WT Docket No. 12-4, 11 (filed Mar. 26, 2012) ("Today, there is ample evidence that additional spectrum is badly needed by providers who lack the substantial spectrum reserves of Verizon."); Reply Comments of the Computer & Communications Industry Association, WT Docket No. 12-4, 4 (filed Mar. 26, 2012) (noting the Commission's recognition of the "looming spectrum crunch" and even Verizon/SpectrumCo/Cox's acknowledgement that the "growing demand for mobile (continued...)

– carriers large and small, nationwide and rural, and post-paid and pre-paid. Indeed, it is one of the few points on which there is industry consensus: RCA has repeatedly urged the Commission to make more spectrum available, ¹¹ and Verizon also has consistently stated on the record that it has a severe need for this AWS spectrum in urban areas by 2015. ¹² Similar to Verizon's urban need, ATN and its subsidiaries also have the same near-term need for spectrum. However, unlike Verizon's needs, ATN's needs arise in rural, rather than urban areas. In order to satisfy the spectrum needs of many carriers, rather than a select few, the Commission must ensure that the proposed Verizon/SpectrumCo Transactions, along with any other corresponding applications, are in the public interest and will allow consumers to receive the competitive services they seek in all areas of the country, rural and urban alike.

a. The Proposed Divestiture Transaction Does Not Alleviate The Spectrum Concerns Previously Identified by ATN

The Divestiture Transaction will not alleviate the widespread concerns regarding the current spectrum crisis, particularly with respect to carriers that serve rural areas, nor will it remedy the anti-competitive spectrum aggregation that will result in many markets pursuant to the Verizon/SpectrumCo Transactions. The current barriers faced by smaller carriers to providing competitive 4G services to consumers will not be mitigated by the Divestiture Transaction, as the badly-needed spectrum is simply moving from one nationwide carrier to

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data services is straining the nation's spectrum resources, making it imperative that such resources are used efficiently.").

¹¹ See e.g., Letter from Michael Lazarus, Counsel to ATN and RCA, Telecommunications Law Professionals PLLC, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4 (June 22, 2012) ("ATN/RCA June 22 Ex Parte); RCA – The Competitive Carriers Association, Petition to Deny or Condition Transactions, WT Docket No. 12-4 (filed Feb. 21, 2012) ("RCA Petition").

¹² Letter from Kathleen Grillo, Senior Vice President, Verizon, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4, 1 (June 14, 2012) (citing numerous filings in which Verizon projects severe network congestion by 2015 if they do not receive additional spectrum).

another. Despite the Divestiture Transaction, rural and regional carriers will remain at a significant disadvantage in the provision of competitive services to consumers vis-à-vis their nationwide counterparts.

This is of particular importance to ATN, as its subsidiaries are generally smaller rural carriers that have substantially less spectrum than the larger carriers.¹³ Without access to useable spectrum, ATN, and other carriers similarly situated, are at a competitive disadvantage in terms of their ability to provide a path to 4G for their customers. If the Verizon/SpectrumCo Transactions are approved, Verizon will certainly maintain, and likely increase, its leading market and spectrum share in AWCC's markets, including a significant amount of AWS spectrum in AWCC's footprint.¹⁴ In addition, if the Divestiture Transaction is approved by the Commission, then both Verizon and T-Mobile will each hold an amount of AWS spectrum in AWCC's footprint that is vastly disproportionate to their need.¹⁵

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¹³ For example, AWCC, which offers rural retail service under the name Alltel, was created from spectrum divested in the context of a Verizon transaction in 2009. It operates largely with the spectrum acquired in that transaction, which is a fraction of the spectrum held by its competitors in the market. Since the creation of AWCC, there have been few meaningful opportunities to acquire additional spectrum either through rarely held auctions or the secondary market. Since that time, there has been an explosion in the use of wireless data and the need for spectrum. Nevertheless, AWCC currently occupies the number two position in its markets. While AWCC is efficiently using its entire spectrum assignment to offer 3G service, it is hard pressed to identify a path to 4G without additional spectrum.

¹⁴ Verizon will have an average of 19.6 MHz of AWS spectrum in AWCC's footprint, and T-Mobile will have an average of 17.3 MHz of AWS in AWCC's footprint.

¹⁵ Cf. Letter from Douglas Minster, Vice President, Government & Regulatory Affairs, ATN, to Marlene Dortch, Secretary, FCC, WT Docket Nos. 12-4, 12-69, Attachment, Slide 5 (Jun. 8, 2012) ("ATN June 8 Ex Parte"); Letter from Michael Lazarus, Counsel to ATN, Telecommunications Law Professionals PLLC, to Marlene Dortch, Secretary, FCC, WT Docket No. 12-4, Attachment, Slide 9 (Jan. 20, 2012) ("ATN January 20 Ex Parte").

III. WAREHOUSING AND SPECULATION CONCERNS REMAIN IN SPITE OF THE PROPOSED DIVESTITURE TRANSACTION

ATN has consistently addressed the spectrum warehousing and speculation concerns presented in the proposed Verizon/SpectrumCo Transaction. Warehousing remains a particular concern given the Commission's acknowledgment of the spectrum crisis, and the growing recognition of the substantial length of time that it will take to identify and deliver new broadband spectrum resources to the wireless market for auction, as contemplated by the National Broadband Plan. These concerns, coupled with the outdated spectrum screen that the Commission continues to utilize, heighten the importance of spectrum divestitures as part of the outcome of these transactions, so that they may have a positive effect on the wireless industry without a deleterious effect on what Verizon and T-Mobile seek to accomplish in urban areas by these transactions.

a. The Divestiture Transaction Does Not Alleviate, But Reaffirms, the Warehousing and Speculation Concerns

The proposed Divestiture Transaction only confirms ATN's continuing concerns that critical spectrum needed by small, rural carriers will be consolidated in the hands of larger carriers that do not have the same urgent need for such spectrum outside of urban areas. Indeed, the Divestiture Transaction reaffirms concerns that "Verizon Wireless will hold more spectrum than they currently plan to use, and some of their spectrum should go to competitive carriers." The *Public Notice* recognized that "[t]he licenses that Verizon Wireless would assign to T-

¹⁶ See e.g., ATN/RCA June 22 Ex Parte; ATN June 8 Ex Parte; ATN January 20 Ex Parte.

¹⁷ As ATN has previously stated, the Commission must recognize that the spectrum screen, as currently utilized, no longer reflects an accurate measure of the potential competitive harm caused by spectrum aggregation. *See also* discussion *infra* Section IV(a).

¹⁸ Press Release, RCA- The Competitive Carriers Association, Competitive Concerns Remain Despite Verizon Wireless, T-Mobile Agreement (June 25, 2012) http://rca-usa.org/uncategorized/competitive-concerns-remain-despite-verizon-wireless-t-mobile-agreement/919562.

Mobile include 47 licenses (covering all or portions of 98 CMAs) that Verizon Wireless has proposed to acquire from SpectrumCo, Cox, and Leap Wireless." ¹⁹ If Verizon truly needed that spectrum as urgently as it has stated on the record, then it likely would not have been so willing to assign it to T-Mobile immediately. ²⁰ A smaller amount of spectrum is needed in rural areas, as compared to urban areas, due to lower populations. Incidentally, the rural markets are also where large carriers' network usage is typically far below their maximum capacity. Therefore, while the large amounts of spectrum that are part of the proposed Verizon/SpectrumCo Transaction and Divestiture Transaction may be needed by nationwide carriers in the more populated urban areas, a smaller amount of spectrum would be sufficient in the less-populated rural areas and would serve the public interest, particularly when the excess could be put to use by regional and rural carriers.

The fact remains that spectrum consolidation in the hands of entities without a near-term need at the expense of putting this spectrum in the hands of rural carriers, will negatively impact competition and consumers in rural markets. The Commission must conduct a thorough examination of Verizon's – and now, also T-Mobile's – spectrum efficiency and spectrum usage on a market-by-market basis to determine whether or not assigning spectrum to either carrier would be in the public interest. If found not to be in the public interest, which is particularly likely in rural areas where Verizon's demonstrated need for spectrum is lacking, then the Commission should require Verizon and T-Mobile to divest useable spectrum to operating companies in such rural areas.

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¹⁹ Public Notice at 1.

²⁰ If approved, the Divestiture Transaction "will all occur simultaneously upon closing, contingent upon regulatory approval of the instant transaction and regulatory approval and closing of the SpectrumCo-Cox Assignments and the Leap Assignments." T-Mobile/Verizon Wireless Applications, File No. 0005272585, Public Interest Statement, at 2 (June 25, 2012).

IV. VERIZON WIRELESS AND T-MOBILE DIVESTITURES OF USABLE SPECTRUM TO OPERATING COMPANIES IS AN APPROPRIATE REMEDY

Spectrum divestitures to operating companies – and in particular, AWS spectrum that can be used to deploy 4G services in rural areas – is an effective, necessary and appropriate remedy for certain markets, and will help satisfy the near-term spectrum needs of rural carriers that are currently not being met by secondary markets or the prospect of future auctions, the timing of which is uncertain. Therefore, if the Commission approves the Divestiture Transaction, both Verizon and T-Mobile must be required to divest any portion of the spectrum they cannot put to near-term use to operating rural carriers that will be able to do so.

a. Spectrum Divestitures Are In The Public Interest

The Commission must recognize that it is not in the public interest to allow a grant of a significant amount of nationwide spectrum for medium- to long-term potential uses during a spectrum crisis where many providers are in need of spectrum. As demonstrated above, these concerns remain, despite the proposed divestiture of certain spectrum to T-Mobile. Therefore, ATN urges the Commission to recognize that even if the proposed Divestiture Transaction is approved, the risk remains high that the Verizon/SpectrumCo Transaction would cause anticompetitive harm without additional conditions, including spectrum divestitures to operating entities, particularly in rural areas.

The Commission has recognized that its public interest analysis "must consider not only the near-term, but also the long-term impacts of proposed transactions on the implementation of Congress' procompetitive, deregulatory policies aimed at developing and encouraging

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²¹ ATN/RCA June 22 Ex Parte.

competitive markets."²² Here, the AWS spectrum at issue is highly desirable, useable, and, indeed, necessary to develop and encourage competitive markets, especially with respect to the needs of rural carriers, including offering 4G service in rural areas. This AWS spectrum – along with the spectrum at issue in the 2 GHz MSS proceeding²³ – is some of the last unconstructed, available nationwide blocks of spectrum for the foreseeable future.²⁴ As a result, the Commission must ensure that this spectrum gets put to its most productive use in the near term by those carriers that are severely spectrum constrained today. In doing so, the Commission should consider the unique challenge faced by rural providers and consider different options for spectrum analysis in rural markets (e.g., a different spectrum screen for such areas).

Therefore, in determining additional, necessary divestitures, and the impact on the public interest analysis, the Commission should recognize not only the urban needs of nationwide carriers, as put forward by Verizon, but also the needs of rural carriers. As ATN has consistently explained to the Commission, rural carriers, such as ATN and its subsidiaries, have a desire for spectrum that is driven by three main needs: (1) available capacity; (2) footprint expansion; and (3) 4G relevance.²⁵ These spectrum needs are near-term, and are not capable of being addressed by the current secondary market,²⁶ or by future auctions. Furthermore, ATN has stressed that

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 $^{^{22}}$ Application of AT&T Inc. and Qualcomm Incorporated For Consent To Assign Licenses and Authorizations, Order, WT Docket No. 11-18, FCC 11-188, \P 30 (rel. Dec. 22, 2011).

²³ In the Matter of Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands; Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, in WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142, Notice of Proposed Rulemaking and Notice of Inquiry (rel. Mar. 21, 2012).

²⁴ Even if Congress does take action to make additional spectrum available through reassignment or repurposing, such spectrum will still not be useable/deployable for a significant period of time.

²⁵ See e.g., ATN June 8 Ex Parte; ATN January 20 Ex Parte.

 $^{^{26}}$ As RCA stated, there is no useable spectrum on the horizon, due in part to "the Twin Bells' purchasing power chilling the secondary markets." *RCA Petition* at 12.

providing rural carriers with additional spectrum mitigates the digital divide by enabling rural carriers' customers to enjoy services identical to those of large carriers in urban areas.²⁷ Absent divestitures or other conditions,²⁸ the Commission simply cannot find the Verizon/SpectrumCo Transactions to be in the public interest as proposed, despite the proposed Divestiture Transaction.

V. CONCLUSION

ATN urges the Commission to seize this opportunity to promote the maximum use of spectrum resources and, simultaneously, promote the further development of rural wireless service. The record indicates that spectrum is urgently needed and recognizes that this proceeding may satisfy that need. The concerns about spectrum shortages and warehousing carriers are not alleviated by the Divestiture Transaction. The Commission has an obligation to act in the best interests of the consumer and promote the public interest. To be sure, if the Commission grants Verizon's request without conditions, a consumer will be able to walk into a Verizon store and obtain the service they desire. However, if the FCC maximizes the potential outcome from this proceeding, a consumer will not only be able to walk into Verizon to obtain their desired service, but will also be able to walk into T-Mobile, Alltel, and a number of other wireless service providers to get what they need – with all competitors having been made stronger by robust competition. This is the outcome that the Commission should strive to produce from this proceeding. Any other result would leave spectrum-starved rural carriers without the oxygen necessary for mobile service innovation in rural areas.

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²⁷ See e.g., ATN June 8 Ex Parte; ATN January 20 Ex Parte.

²⁸ RCA argues that the Commission should deny the Verizon/SpectrumCo transaction unless conditions such as substantial divestitures, reasonable voice and data roaming rates, and interoperability and special access requirements are imposed. *See RCA Petition* at 53-59.

Respectfully submitted,

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